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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,334	11/20/2003	Steven R. Cosentino	DTG-104US	9252
31344	7590	03/14/2006	EXAMINER	
RATNERPRESTIA P.O. BOX 1596 WILMINGTON, DE 19899			SALVATORE, LYNDA	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/718,334	COSENTINO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lynda M. Salvatore	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Applicant's arguments filed 12/20/05 have been fully considered and entered.

Applicant's arguments regarding the double patenting rejection over copending application No.10/714144 are found persuasive. As such, this rejection is hereby withdrawn. Applicant's arguments regarding the obviousness rejection made over Benim et al., are found persuasive. As such, this rejection is hereby withdrawn. However, despite this advance, Applicant's claims are not found patently distinguishable over the combination of Benim et al., US 2003/0003249 A1 in view of Murray et al., US 4,854, 474 or Meyers US 3,758, 023 for reasons set forth herein below.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-19 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No.10/820549. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter sought in the instant application is fully encompassed by the claimed subject matter of 10/820549.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benim et al., US 20030003249 A1 in view of Murray et al., US 4,854, 474 or Meyers US 3,758, 023.

The published US patent application issued to Benim et al., teach a packaging laminate label stock comprising a facing of a first film layer (13), and a lower melting heat sealable second layer (14). Said facing material is further laminated to an insulating fibrous batt (30) (abstract, Figure 2, Section 0022 and 0026). Suitable facing film materials include bi-axially oriented polyester film (Section 0028). With regard to the reinforcing polymer scrim limitations, Benim et al., teach a variety of suitable fibrous materials such as those made from melt-blown polyolefins, felt or needled fabrics (Section 0022-0025). Though, Benim et al., does not specifically teach the structure of a scrim, scrim structures are commonly non-woven. As such, the Examiner considers the teaching of meltblown polyolefin non-woven fabric sufficient meet the limitation of a reinforcing scrim polymer. Benim et al., teaches that the heat sealing second layer (14) has a thickness ranging from .0025 mil to 5 mil. For example 1 mil converts to .001 inches. With regard to the recycling limitations, Benim et al., teach that the packaging laminate label stock composite is wholly recyclable (Section 0010).

Benim et al., fail to teach adhering the composite laminate label stock to a paperboard layer, however, Benim et al., does teach that the label can be adhered to disposable cups or ice

cream cartons (section 0034). It is commonly known in the art that disposable cups or cartons are constructed from paper. For example, the patent issued to Murray et al., teach a drinking cup formed from paperboard panels (column 1, 15-23). The patent issued to Meyers teaches an ice cream carton formed from paperboard (column 2, 30-36).

Therefore, motivated by the desire to expand the number of applications for the composite laminate label, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adhere the composite laminate label taught by Benim et al., onto either the disposable cup taught by Murray et al., or the ice cream carton taught by Meyers.

With regard to the limitations of providing a thermal bonding polymer layer having a thickness between 10% and 40% of the combined thickness of the film and thermal bonding layer, Benim et al., does not specifically teach the relative ratio between the film layer and the bonding layer, however, it is the position of the Examiner that it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the relative thicknesses of each layer based on the desired end use as a packaging label and/or self sealing material (Sections 0035 and 0036). It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

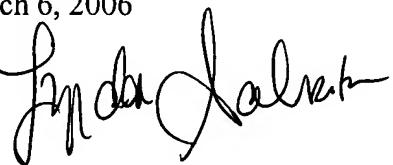
Art Unit: 1771

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 6, 2006

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A handwritten signature in black ink, appearing to read "Linda Shultz".